

**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for Early)
Termination of Probation of:)

ROBERT DANIEL SCHULTE, M.D.)

File No. 16-2000-113334

Physician's and Surgeon's)
Certificate No. G 68403)

Respondent)
_____)

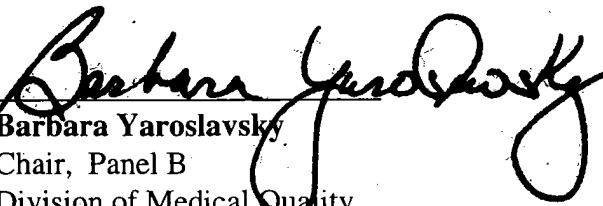
DECISION

The attached **Proposed Decision** is hereby adopted as the Decision and Order of the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on **February 7, 2008.**

IT IS SO ORDERED **January 8, 2008.**

MEDICAL BOARD OF CALIFORNIA

By: 
Barbara Yaroslavsky
Chair, Panel B
Division of Medical Quality

BEFORE THE
DIVISION OF MEDICAL QUALITY
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In the Matter of the Petition for Early
Termination of Probation of:

OAH No. L-2007090739

ROBERT DANIEL SCHULTE, M.D.,

Physician and Surgeon's
Certificate No. G-68403,

Petitioner.

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles on November 6, 2007. The Attorney General of California was represented by Tan Tran, Deputy Attorney General, pursuant to Government Code section 11522. Petitioner Robert D. Schulte, M.D., was present and represented by Sarah E. Hersh, Attorney at Law.

Oral and documentary having been received and the matter submitted for decision, the Administrative Law Judge finds as follows:

FACTUAL FINDINGS

1. On or about April 16, 1990, petitioner Robert Daniel Schulte, M.D., was issued physician and surgeon's certificate no. G-68403 by the Medical Board of California. His certificate has been renewed and is current. Petitioner's certificate is on probation to the Medical Board pursuant to a stipulated settlement and disciplinary order.
2. On or about January 2, 2007, petitioner filed a Petition for Penalty Relief with the Medical Board, seeking early termination of probation. He practices psychiatry in Scottsdale, Arizona, at his clinic or office called the North Scottsdale Psychiatric Specialists.
3. In a Decision that became effective on June 5, 2003, and pursuant to a Stipulated Settlement and Disciplinary Order in the Matter of the Accusation Against Robert

Daniel Schulte, M.D., Case No. 16-2000-113334, petitioner's medical certificate was revoked, revocation was stayed, and his certificate was placed on probation for five (5) years for unprofessional conduct under Business and Professions Code sections 2305 and 141, for having had his license to practice medicine in the State of Arizona subjected to disciplinary action for acts substantially related to the practice of medicine.

4. The facts and circumstances of the discipline of petitioner's medical certificate were as follows:

a. In 1991, petitioner was practicing medicine in Massachusetts when he was arrested for using marijuana. He entered into a substance abuse program under the aegis of the Massachusetts Physician Health Service program. In or about 1997, petitioner relocated to Arizona from Massachusetts and obtained a license to practice allopathic medicine in Arizona. The application for licensure in Arizona asked the following questions: "Have you ever been charged with a violation of any statute, rule or regulation of any domestic or foreign governmental agency? Has there been any action initiated against you by or through any medical board or association? Have you ever been treated for the use of or misuse of any chemical substance or substances?" In response, petitioner answered "No" to one or more of these questions on his Arizona licensure application. As such, his answer or answers on his licensure application were false and incorrect, for he failed to disclose that he had been arrested for using marijuana. Petitioner thought that his arrest had been removed from his record. During an interview with the Arizona Board of Medical Examiners (Arizona Board), petitioner admitted that he used marijuana in 1990 when he lived in Massachusetts and was arrested for using marijuana in 1991.

c. Moreover, in December 1999, the Arizona Board of Medical Examiners received information that petitioner was receiving large amounts of the controlled substances Ativan and Dexedrine by prescription. Fifteen years earlier in 1994, petitioner underwent a craniotomy to treat a brain aneurysm; he was experiencing seizures due to a mass. In 1999, he was under the care of a psychiatrist for attention deficit disorder with hyperactivity, anxiety, and depression and was overweight. He had been prescribed the Ativan and Dexedrine. The Arizona Board required petitioner to be evaluated at the Talbot Recovery Center and Sierra Tucson and, following these evaluations, he was diagnosed with a toxic reaction to stimulant medication following his craniotomy as well as depression. He was also abusing alcohol. The Arizona Board recommended that he continue with substance abuse rehabilitation.

d. On July 27, 2000, petitioner entered into a Consent Agreement with the Arizona Board and agreed that he had committed unprofessional conduct by knowingly making a false or misleading statement on his licensure application and for engaging in conduct harmful to the health of the patient or the public by using controlled substances and/or alcohol. On September 1, 2000, pursuant to the Consent Agreement, the Arizona Board issued a letter of reprimand to petitioner and placed his Arizona license on probation for five years on condition that he participate in a Monitored Aftercare Program for physicians impaired by drug abuse or alcohol. Under the treatment program, petitioner was

ordered to attend group therapy, attend 90 12-step meetings for substance abuse in 90 days and then a minimum of three weekly 12-step meetings thereafter, obtain a physician to coordinate his medical care and treatment, abstain from taking any medication unless prescribed to him by an approved primary care physician, maintain a log of medications taken by him, abstain from alcohol, submit to biological fluid collection, submit to examinations to monitor his ability to practice medicine safely, and begin treatment by an approved psychiatrist.

5. Under the terms of the Stipulated Settlement and Disciplinary Order with the California Medical Board, petitioner's certificate was placed on probation on the following pertinent conditions:

a. Condition No. 1 required that he enroll and participate in the Diversion Program of the Division of Medical Quality. His continued and successful completion of the Arizona Board's Monitored Aftercare Program would be deemed satisfaction of this condition.

b. Conditions Nos. 2 and 3 required that he abstain completely from the use or possession of controlled substances and dangerous drugs or any drug requiring a prescription, unless prescribed for a bonafide illness or conditions, as well as alcoholic beverages.

c. Condition No. 4 required that he immediately submit to biological fluid testing upon the request of the Division of Medical Quality.

d. Condition No. 5 required that petitioner maintain a record of all controlled substances prescribed, dispensed, or administered by him during probation and make the record available for inspection and copying by the Division of Medical Quality.

e. Condition No. 6 required, in pertinent part, that petitioner obey all federal, state, and local laws and all rules governing the practice of medicine in California.

f. Conditions Nos. 7, 8, and 9 required that petitioner submit quarterly declarations under penalty of perjury on forms provided by the Division, comply with the probation surveillance program, and appear for interviews upon request.

g. Conditions Nos. 13 and 14 required that petitioner pay cost recovery in the sum of \$500 and probation monitoring costs for each and every year of probation.

6. (A) Under the Stipulated Settlement and Disciplinary Order, Condition No. 10 provided that, if he should leave California to reside or to practice outside this state or stop practicing medicine in California, petitioner was to notify the Division of Medical Quality of the dates of departure and return or the dates of non-practice within California. Non-practice was defined as "any period of time exceeding thirty (30) days in which [petitioner]

is not engaging in any activities defined in Sections 2051 and 2052 of the Business and Professions Code.”

(B) Condition No. 10 further provided that “periods of temporary or permanent residence or practice outside California or of non-practice within California . . . would not apply to the reduction of the probationary order.” Finally, Condition No. 10 added that any licensee, who was disciplined under Business and Professions Code sections 141, subdivision (a), or 2305, for having out-of-state discipline, may petition for modification or termination of probation if the other state’s disciplinary terms are modified, terminated, or reduced and if at least one year has elapsed from the effective date of the California discipline.

(C) On March 10, 2003, the California Attorney General’s office advised petitioner that, under Condition No. 10, while he was not practicing in this state, the terms of his probation were tolled. He was still expected to obey all laws under Condition No. 6 and to pay cost recovery under Condition No. 13.

7. (A) After his California medical certificate was placed on probation on June 5, 2003, pursuant to the Stipulated Settlement and Disciplinary Order in Case No. 16-2000-113334, petitioner remained living in Arizona and continued practicing medicine under probationary status in that state.

(B) On May 23, 2006, an investigator assistant with the California Medical Board advised petitioner that his probation file had been transferred to his caseload and that he was not required to send quarterly declarations while practicing out-of-state. Petitioner was further advised to contact the investigator assistant on a semi-annual basis and to update his employment status and address.

(C) On May 27, 2006, petitioner informed the investigator assistant and the Medical Board in writing that he continued to engage in private practice full-time in child and adolescent psychiatry and adult psychiatry at his office in Scottsdale, Arizona.

8. (A) On May 11, 2005, the Arizona Board terminated petitioner’s five-year probation a couple of months earlier than first ordered. Petitioner has not been on probation to the Arizona Board for the past two and one-half years.

(B) As established by the September 2006 letter by Michel A. Sucher, M.D., who is director of the Monitored Aftercare Program for the Arizona Board, petitioner was first treated for chemical dependency at Sierra Tucson from February 17, 2000, until March 15, 2000. He was then placed on the Monitored Aftercare Program in May 2000 pursuant to the order of the Arizona Medical Board. Monitoring included random drug screening, weekly relapse prevention group sessions, attendance at self-help meetings, and regular progress evaluations. Petitioner’s program was overseen by an approved physician. On May 24, 2005, he successfully completed the Monitored Aftercare Program after five years of participation. All of his random drug screens were negative and he fully complied with the

program. Dr. Sucher states that petitioner's prognosis for ongoing recovery is excellent, he can practice medicine safely, and continues to work on his recovery and sobriety. Dr. Sucher opines that petitioner does not require any further monitoring and he supports petitioner's request for termination of probation before the California Medical Board.

9. (A) After his Arizona medical license was placed on probation, petitioner's license to practice medicine in Massachusetts was suspended in May 2002 and said suspension was to be stayed pending his compliance with probationary conditions. During his Massachusetts probation, petitioner was not allowed to practice medicine in that state. He was allowed to petition for authorization to practice in Massachusetts if he could document successful recovery from his chemical dependency or if he entered into a probation agreement providing for chemical dependency treatment and monitoring. If his probation in Arizona was terminated, petitioner could request that his Massachusetts probation be terminated and that the suspension of his Massachusetts license be stayed.

(B) On April 12, 2006, following his completion and termination of his Arizona probation, the Massachusetts Board of Registration in Medicine granted petitioner's request and terminated his probation in that state and stayed the suspension of his Massachusetts license. His medical license in Massachusetts is now active and without any restriction.

10. (A) In a letter dated September 6, 2006, Robert A. Eppl, M.D., of Berkeley, states that he has known petitioner for more than 20 years and indicates that petitioner has had a "consistently steady and stable situation in life" for the past five years. Dr. Eppl opines that petitioner's troubles stemmed from physiologic problems that have been resolved and he is caring, insightful, and a knowledgeable medical doctor.

(B) Kevin S. Ladin, M.D., practices pain medicine in Phoenix, Arizona, and has known petitioner for more than six years. Dr. Ladin is aware of petitioner's problems with addiction and corroborates that he is committed to his ongoing recovery. Dr. Ladin opines that petitioner is an excellent psychiatrist who has the ability to help patients with the most difficult problems. He refers family members and friends to petitioner for evaluation and treatment.

(C) Michael J. Brennan, M.D., of Phoenix has written a letter of reference for petitioner. Dr. Brennan has known petitioner for seven years and is aware that he completed the Monitored Aftercare Program of the Arizona Board. Dr. Brennan writes that petitioner is honest, calm, and a gifted communicator. He has referred patients and a family member to petitioner for treatment and has been pleased with the results of petitioner's diagnoses and treatment.

(D) Rann D. Melmed, M.D., of Scottsdale, Arizona, is a developmental pediatrician and director of an autism research center. He is aware that petitioner completed a treatment program for substance abuse. Petitioner is Dr. Melmed's first choice when referring children and adults for a psychiatric evaluation. Dr. Melmed finds that petitioner

has excellent medical knowledge and diagnostic skills and is thoughtful and attentive to his patients.

(E) In his letter of reference, Kevin Foster, M.D., states he is a trauma and burn specialist and general surgeon at the Maricopa Medical Center in Phoenix. He met petitioner when they were both participating in the Monitored Aftercare Program of the Arizona Board. Dr. Foster attests that petitioner has maintained his recovery and places the highest priority in staying sober. They help each other in their recovery programs. Dr. Foster indicates that petitioner is well-known and respected in the Phoenix medical community and his clinical practice and ethical standards are beyond reproach.

11. (A) Based on Findings 3 - 8 and 10 above, petitioner has satisfied Conditions No. 1 of his California probation by successfully completing the Arizona Board's Monitored Aftercare Program in lieu of the Diversion Program of the Division of Medical Quality.

(B) Based on Findings 3 - 8 and 10 above, petitioner satisfied Conditions Nos. 2 and 3 of his California probation by abstaining from the use or possession of controlled substances and dangerous drugs or any drug requiring a prescription and by abstaining from the use of alcoholic beverages.

(C) Based on Findings 3 - 8 and 10 above, petitioner satisfied Condition 6 of his California probation by obeying all laws and all rules governing the practice of medicine in this state.

(D) It was not established that petitioner paid or reimbursed the Division of Medical Quality in the amount of \$500 for its investigative or prosecution costs within 90 days of the effective date of his disciplinary order. As such, it was not established that petitioner satisfied Condition No. 13 of his California probation.

12. (A) Petitioner admits that he used and was dependent upon marijuana and alcohol in the past. He began using marijuana in 1987 after he underwent his craniotomy. He last used marijuana in 1991 when he suffered his arrest in Massachusetts and was then required to enter a physician's recovery program. He has not abused alcohol in the past seven or eight years since being placed on probation in Arizona and entering the Monitored Aftercare Program.

(B) Petitioner recognizes that his recovery from substance abuse is an ongoing process and he is committed to his recovery program. He wants to remain sober. Petitioner attends two meetings each week of a 12-step recovery program and wants to continue his attendance. He has learned moderation in his drive to be successful. He limits the number of patients that he sees to avoid being overly stressed and to devote more time to his cases. He spends more time with his family and tries to have balance in his life. He interacts and consults with his colleagues to discuss assessments and patient care. Petitioner loves being a physician and believes that his experience and recovery in substance abuse helps him to better understand and treat patients with substance abuse problems.

13. (A) On an undetermined date in 2006, petitioner participated in the Pain Management Homestudy program given by the School of Medicine at the University of California San Diego. He was awarded 12 hours of continuing education credit.

(B) In 2006, petitioner participated in and received credit for nine hours of continuing medical education in practical reviews in psychiatry offered by the Oakstone Medical Publishing.

(C) In 2005 and 2006, petitioner participated in and received credit for 66 hours of continuing medical education in practical reviews of psychiatry offered by the New York University Post-Graduate Medical School.

(D) In 2004, petitioner participated in the educational activity entitled Practical Reviews in Psychiatry, a self study course, offered by the Johns Hopkins University School of Medicine and received 51 credit hours. In 2001, 2002, and 2003, petitioner participated in the same study course and received continuing medical education credit for 96 hours, including six hours for ethics study.

14. (A) Petitioner was born in Connecticut and grew up in Massachusetts. He attained a bachelor of science from Tufts College in 1978 and his medical degree from Harvard Medical School in 1985. He paid his way through college by working as an ambulance medical technician, an aide to a quadriplegic student, college residential advisor, counselor at a residential camp for emotionally disturbed adolescents, and research assistant. Before starting medical school, petitioner worked as a research assistant in biochemistry for two years at the Cancer Research Institute of the New England Deaconess Hospital in Boston.

(B) After medical school, petitioner completed a surgical internship at the New England Deaconess Hospital, a radiology residency at the Beth Israel Hospital, and psychiatry residency at the Massachusetts Mental Health Center, which were all affiliated with the Harvard Medical School. From 1989 through 1991, he completed fellowships in child psychiatry. Petitioner began the private practice of medicine in 1989 in Westwood, Massachusetts, in the field of child, adolescent, and adult psychotherapy. In addition, he was assistant director of children's services and medical coordinator of adolescent day treatment services at Westwood Lodge Hospital from 1991 through 1993 and, thereafter, assistant medical director and chief psychiatrist at Medford State Hospital from 1993 through 1997.

(C) In 1997, petitioner moved to Arizona after vacationing there during previous springs and started his private practice in child, adolescent, and adult psychotherapy and family and group therapy in Scottsdale, Arizona. Petitioner has attained board certification in psychiatry and neurology and child and adolescent psychiatry and is eligible for board certification in forensic psychiatry. Over the past ten years in Scottsdale, petitioner has developed a large and busy psychiatric practice and a reputation for treating patients with difficult conditions.

15. Petitioner is now single after having been married twice. He has two children who live with his second wife in Arizona and a 17-year-old son who lives with his first wife in Massachusetts. Petitioner obtained his California medical certificate in 1990 but has not practiced or lived in this state. He hopes that one day he can live and practice psychiatry in California to be closer to his family. His mother and sister live in the Palo Alto area.

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Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds exist to grant petitioner's request for penalty relief under Government Code section 11522 and Business and Professions Code section 2307 in that petitioner has shown by clear and convincing evidence that he has complied with and/or successfully completed some of the pertinent terms and conditions of his probation and that public safety and welfare would not be compromised if he is terminated early from probation, based on Findings 1 – 15 above.

2. Discussion—Over four years ago, in June 2003, petitioner's medical certificate was placed on probation for five years with Division of Medical Quality of the Medical Board under a Stipulated Settlement and Disciplinary Order showing that he had suffered discipline on his medical license issued by another state. Three years earlier, in July 2000, his Arizona medical license was placed on probation for five years for making a false statement on his license application about a prior arrest for marijuana use and for using controlled substances and alcohol. In Arizona, petitioner was ordered to participate in a Monitored Aftercare Program for impaired physicians.

In this state, petitioner's probation in California has been tolling since inception of his disciplinary order because he has always resided in Arizona and has not practiced medicine in this state. While practicing out of state, he was still expected to obey all laws and to pay cost recovery. His successful completion of the Arizona Board's Monitored Aftercare Program was to be deemed satisfaction of his probationary term requiring that he participate in the Diversion Program. Under Condition No. 10 of his disciplinary order, his residence or practice would not apply to reduce the probationary order or term. However, because his California medical certificate was placed on probation due to out-of-state disciplinary action, Condition No. 10 further provided that petitioner could petition for modification or termination of probation if the other state's disciplinary terms modified, terminated, or reduced and at least one year has elapsed from the effective date of his California probationary order.

Here, petitioner has requested early termination of his California probation on the grounds that his Arizona probation has been terminated. After five years of probation in Arizona, petitioner successfully completed that state's Monitored Aftercare Program. He participated in random drug screenings which were all negative, weekly relapse prevention sessions, self-help meetings, and regular progress evaluations. According to the director of the Arizona program, petitioner's prognosis for recovery is excellent and he continues to work on his sobriety. Petitioner does not require further monitoring and can safely practice medicine. In May 2005, the Arizona Board terminated petitioner's probation. Based on his completion of the Arizona Board's Monitored Aftercare Program and the termination of his probation, the Massachusetts Board likewise terminated his probation in that state as well.

While on probation and not living or practicing in this state, petitioner has shown that he has complied with those terms and conditions of his probation that he was expected to follow as an out-of-state practitioner. He has obeyed all laws, complied with his Arizona Board disciplinary order, and successfully completed his Arizona probation. He has abstained from using and possessing controlled substances and alcohol. His successful completion of the Arizona Board's Monitored Aftercare Program constitutes satisfaction of Condition No. 1 of his probationary order requiring that he participate in the Medical Board's Diversion Program.

Based on his successful completion of the Arizona Board's Monitored Aftercare Program, the termination of his probation in Arizona, evidence of his sobriety and ability to practice medicine safely, and his commitment to continuing his recovery from substance abuse, the evidence demonstrates that public health, safety, and welfare will not be compromised if petitioner were to obtain early termination of his five-year term of probation with the Medical Board. By agreeing to be placed on probation in Arizona and California and completing the Arizona's equivalent of a physician's diversion program, petitioner has received treatment for substance abuse, he recognizes the importance of his now sober lifestyle, and he is dedicated to maintaining that lifestyle so that he continue to treat and help his patients.

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WHEREFORE, the following Order is hereby made:

ORDER

The Petition for Penalty Relief filed by petitioner Robert Daniel Schulte, M.D., for early termination of probation is granted, based on Conclusions of Law 1 and 2, jointly and for all, provided that he shows written or documentary proof to the Division of Medical Quality, Medical Board of California, that he has paid cost recovery of \$500.

Dated:

Dec 9 2007



Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings